

Honorable _____

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

UNITED STATES OF AMERICA, ON BEHALF)
OF THE NATIONAL OCEANIC AND)
ATMOSPHERIC ADMINISTRATION AND THE) CIVIL NO
UNITED STATES DEPARTMENT OF THE)
INTERIOR; STATE OF WASHINGTON) CONSENT DECREE
THROUGH THE WASHINGTON DEPARTMENT)
OF ECOLOGY; PUYALLUP TRIBE OF INDIANS;)
MUCKLESHOOT INDIAN TRIBE,)
Plaintiffs,)
v.)
AOL EXPRESS, INC., ARKEMA INC.,)
EDWARD and MOLLY BARRY, BUFFELEN)
WOODWORKING CO., CHS INC., CHARLES P)
and PATRICIA CURRAN, DUNLAP TOWING)
COMPANY, ESTATE OF NORMAN NORDLUND,)
ESTATE OF LESLIE P. SUSSMAN, F O F., INC.,)
HYLEBOS BOAT HAVEN, HYLEBOS MARINA)
INC., JUDY JOHNSON, JONES CHEMICALS,)
INC., JOSEPH SIMON & SONS/RAIL &)
LOCOMOTIVE EQUIPMENT CO.,)
LOUISIANA-PACIFIC CORPORATION, PHYLLIS)
NORDLUND, NORDLUND BOAT COMPANY,)
INC., NORDLUND PROPERTIES, INC., NOVEON)

CONSENT DECREE - Page 1

U.S. Department of Justice
NOAA GC - DOJ DARC
7600 Sand Point Way NE
Seattle, WA 98115-0070
(206) 526-6616

1 KALAMA CHEMICAL, INC , DON and ALBA)
2 OLINE, RONALD OLINE, DONALD S. and)
3 BARBARA L. OLSON, KAY E. OLSON, OLSON &)
4 CURRAN BARNACLE STOPPING SALT WATER)
5 FREE VERTICAL DRY DOCK CO dba OLE &)
6 CHARLIE'S MARINAS, PORTAC, INC ,)
7 RAYONIER PROPERTIES, LLC, PAULA ROSE,)
8 SUSSMAN ROSE SUSSMAN, ALAN SUSSMAN,)
9 SOPHIE SUSSMAN, USG INTERIORS, INC.,)
10 WASSER & WINTERS CO., INC , WEST)
11 WATERWAY ASSOCIATES, P.S., ZIDELL)
12 MARINE CORPORATION,)
13 Defendants.)
14

15 I. INTRODUCTION

16 The United States of America ("United States"), on behalf of the National Oceanic and
17 Atmospheric Administration ("NOAA") and the United States Department of the Interior; the State
18 of Washington (the "State") through the Washington State Department of Ecology; the Puyallup
19 Tribe of Indians; and the Muckleshoot Indian Tribe (collectively, "Plaintiffs"), have filed a complaint
20 in this case against defendants AOL Express, Inc., Arkema Inc., Edward & Molly Barry, Buffelen
21 Woodworking Co., CHS Inc., Charles P. and Patricia Curran, Dunlap Towing Company, Estate of
22 Norman Nordlund, Estate of Leslie P. Sussman, F.O.F., Inc., Hylebos Boat Haven, Hylebos Marina,
23 Inc., Judy Johnson, Jones Chemicals, Inc., Joseph Simon & Sons/Rail & Locomotive Equipment Co.,
24 Louisiana-Pacific Corporation, Phyllis Nordlund, Nordlund Boat Company, Inc., Nordlund
25 Properties, Inc., Noveon Kalama Chemical, Inc., Don and Alba Oline, Ronald Oline, Donald S. and
26 Barbara L. Olson, Kay E. Olson, Olson & Curran Barnacle Stopping Salt Water Free Vertical Dry
27 Dock Co. dba Ole & Charlie's Marinas, Portac, Inc., Rayonier Properties, LLC, Paula Rose, Sussman
28 Rose Sussman, Alan Sussman, Sophie Sussman, USG Interiors, Inc., Wasser & Winters Co., Inc.,
West Waterway Associates, P.S., and Zidell Marine Corporation ("Defendants") pursuant to Section
107 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as
amended (CERCLA), 42 U.S.C. § 9607; the Model Toxics Control Act (MTCA), chapter 70.105D

1 RCW; Section 311 of the Clean Water Act (CWA), 33 U.S.C. § 1321; and Section 1002(b)(2)(A)
2 of the Oil Pollution Act of 1990 (OPA), 33 U.S.C. § 2702(b)(2)(A). This Consent Decree (the
3 “Decree”) addresses the claims asserted in the Complaint against Defendants for Natural Resource
4 Damages (as defined below) in the Commencement Bay Environment (as defined below).

5 II. RECITALS

6 A. The United States Department of Commerce, acting through NOAA; the United
7 States Department of the Interior; the Washington Department of Ecology on behalf of the State of
8 Washington; the Puyallup Tribe of Indians, and the Muckleshoot Indian Tribe (collectively, “the
9 Trustees” and, individually, a “Trustee”), under the authority of Section 107(f) of CERCLA, 42
10 U.S.C. § 9607(f), Section 1006(b) of OPA, 33 U.S.C. § 2706(b), and 40 C.F.R. Part 300, subpart G,
11 serve as trustees for natural resources for the assessment and recovery of damages for injury to,
12 destruction of, or loss of natural resources under their trusteeship.

13 B. Investigations conducted by the United States Environmental Protection Agency
14 (“EPA”), the Trustees, and others have detected hazardous substances in the sediments, soils and
15 groundwater of the Commencement Bay Environment, including but not limited to arsenic,
16 antimony, cadmium, chromium, copper, mercury, nickel, lead, zinc, bis(2-ethylhexyl)-phthalate,
17 hexachlorobenzene, hexachlorobutadiene, polycyclic aromatic hydrocarbons (PAHs), and
18 polychlorinated biphenyls (PCBs). Overall, the Trustees have documented the presence of over 30
19 hazardous substances in the marine sediments of Commencement Bay’s Hylebos Waterway.

20 C. The Trustees began assessing natural resource damages in the Commencement Bay
21 Environment in October 1991 by finding that hazardous substances had been released into the
22 Commencement Bay Environment; that public trust natural resources had likely been injured by the
23 releases; that data sufficient to pursue a natural resource damage assessment were available or could
24 likely be obtained at a reasonable cost; and that, without further action, implemented and planned
25 response actions would not adequately remedy the resource injuries. *See* Preassessment Screen of
26 Natural Resource Damages in the Commencement Bay Environment Due to Activities Taking Place
27 In and About the Commencement Bay/Nearshore Tideflats (CB/NT) Superfund Site (October 29,
28

1 1991). The Trustees notified representatives of known potentially responsible parties ("PRPs") of
2 their intent to conduct a damage assessment. The Trustees subsequently entered into a Funding and
3 Participation Agreement for Phase 1 of the Commencement Bay-Wide Natural Resource Damage
4 Assessment, dated February 10, 1993, with several of the major PRPs. The Trustees published a
5 report on the results of Phase 1 of the damage assessment process in June 1995. Those major PRPs
6 did not participate in subsequent stages of the damage assessment, and the Trustees continued the
7 process independently. The Trustees have now completed a series of studies during Phase 2 of the
8 damage assessment, focusing on impacts of contaminants on marine sediments, benthic organisms,
9 flatfish and salmonids. Results of those studies were published in a series of reports, consisting of
10 Commencement Bay Natural Resource Trustees, 1996, Hylebos Waterway Data and Data Analysis
11 Report; Collier, I.K., L.L. Johnson, M.S. Myers, C.M. Stehr, M.M. Krahn, and J.E. Stein, 1998, Fish
12 injury in the Hylebos Waterway in Commencement Bay, Washington; Mary R. Arkoosh, Ed Casillas,
13 Tracy K. Collier, Margaret M. Krahn and John E. Stein, 1998, Effects of Chemical Contaminants
14 from the Hylebos Waterway on Disease Resistance of Juvenile Salmon; Ed Casillas, Bich-Thuy L
15 Eberhart, Frank C. Sommers, Tracy K. Collier, Margaret M. Krahn and John E. Stein, 1998, Effects
16 of Chemical Contaminants from the Hylebos Waterway on Growth of Juvenile Chinook Salmon;
17 and Ed Casillas, Bich-Thuy L. Eberhart, Tracy K. Collier, Margaret M. Krahn and John E. Stein,
18 1998, Exposure of Juvenile Chinook Salmon to Chemical Contaminants Specific to the Hylebos
19 Waterway. Based on this research, the Plaintiffs and Defendants (collectively, the "Parties" and,
20 individually, a "Party") agree that no further natural resource damage assessment is required to
21 effectuate the purposes of this Consent Decree, with respect to Defendants.

22 D. Plaintiffs have filed a complaint (the "Complaint") pursuant to Section 107 of
23 CERCLA, 42 U.S.C. § 9607; MTCA, chapter 70.105D RCW; CWA, 33 U.S.C. §§ 1251 et seq.; and
24 OPA, 33 U.S.C. §§ 2701 et seq., seeking recovery from Defendants of damages for injury to,
25 destruction of, and loss of natural resources resulting from releases of hazardous substances into the
26 Commencement Bay Environment, including the costs of assessing the damages.

27 E. Plaintiffs allege in the Complaint that Defendants each own or in the past owned
28

and/or operated real property or facilities, identified by the Trustees as:

Defendant

Site Name

AOL Express, Inc.

AOL EXPRESS

Arkema Inc.

ELF ATOCHEM
DUNLAP TOWING

Buffelen Woodworking Co.

BUFFELEN

CHS, Inc.

CENEX AG

Edward and Molly Barry, Charles P.
and Patricia Curran, Donald S. and
Barbara Olson, Kay E. Olson, Olson &
Curran Barnacle Stopping Salt Water
Free Vertical Dry Dock Co. dba Ole &
Charlie's Marinas and West Waterway
Associates, P.S.

OLE & CHARLIE'S MARINA

Dunlap Towing Company

DUNLAP TOWING

Estate of Norman Nordlund, Hylebos
Boat Haven, Phyllis Nordlund,
Nordlund Boat Company, Inc. and
Nordlund Properties, Inc.

HYLEBOS MARINA
MANKE LUMBER

F.O.F., Inc.

OCCIDENTAL
U.S. NAVAL RESERVE

Hylebos Marina, Inc.

HYLEBOS MARINA
OLINE PROPERTIES (1800 MARINE VIEW DR.)

Judy Johnson

DON OLINE AUTOFLUFF SITE
HYLEBOS MARINA
OLINE PROPERTIES (1800 MARINE VIEW DR.)

Jones Chemicals, Inc.

JONES CHEMICALS

Joseph Simon & Sons/
Rail & Locomotive Equipment Co.

JOSEPH SIMON & SONS

Louisiana-Pacific Corporation

LOUISIANA-PACIFIC

Noveon Kalama Chemical, Inc.

SOUND REFINING

Don and Alba Oline

DON OLINE AUTOFLUFF SITE
HYLEBOS MARINA
STONE INVESTMENTS

Ronald Oline

DON OLINE AUTOFLUFF SITE

1		HYLEBOS MARINA
2		OLINE PROPERTIES (1800 MARINE VIEW DR.)
3	Portac, Inc.	PORT OF TACOMA (3002 TAYLOR WAY)
4	Rayonier Properties, LLC	TAYLOR WAY PROPERTIES
5	Estate of Leslie P. Sussman, Paula	GENERAL METALS OF TACOMA
6	Rose, Sussman Rose Sussman, Alan	
	Sussman and Sophie Sussman,	
7	USG Interiors, Inc	US GYPSUM
8	Wasser & Winters Co., Inc.	WASSER WINTERS
9	Zidell Marine Corporation	AK-WA SHIPBUILDING

10 Plaintiffs further allege that from each of such sites storm water, surface water runoff, wastewater,
 11 other process discharges, and/or groundwater have flowed to the Commencement Bay Environment.
 12 Plaintiffs also allege that investigations by EPA and others have detected concentrations of
 13 hazardous substances in soils, groundwater or sediments on or in those properties or facilities. Some
 14 of these hazardous substances are found in the sediments of the Commencement Bay Environment.

15 F. Plaintiffs further allege that hazardous substances have been or are being released to
 16 the Commencement Bay Environment from properties or facilities owned and/or operated by each
 17 Defendant through direct discharge, surface water runoff, groundwater and seeps, and that those
 18 hazardous substances have caused injury to, destruction of and loss of natural resources in the
 19 Commencement Bay Environment under Plaintiffs' trusteeship, including fish, shellfish,
 20 invertebrates, birds, marine sediments, and resources of cultural significance. Plaintiffs further
 21 allege that each of them and the public have suffered the loss of natural resource services (including
 22 ecological services as well as direct and passive human use losses) as a consequence of those
 23 injuries.

24 G. Plaintiffs allege that each Defendant is either (a) the owner and/or operator of a vessel
 25 or a facility; (b) a person who at the time of disposal or release of any hazardous substance owned
 26 or operated any facility at which such hazardous substances were disposed of; (c) a person who by
 27 contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter
 28

1 for transport for disposal or treatment, of hazardous substances owned or possessed by such person,
2 by any other party or entity, or otherwise generated any hazardous substance disposed of or treated,
3 at any facility or incineration vessel owned or operated by another party or entity and containing such
4 hazardous substances; and/or (d) a person who accepts or accepted any hazardous substances for
5 transport to disposal or treatment facilities, incineration vessels or sites selected by such person from
6 which there is a release or a threatened release of a hazardous substance that causes the incurrence
7 of response costs within the meaning of 42 U.S.C. § 9607 and RCW 70.105D.040.

8 H. Defendants each deny all the allegations of the Complaint, and the allegations
9 contained in Paragraphs E, F, G, K, M and O of this Section.

10 I. Although the Trustees have initiated but not yet completed a natural resource damage
11 assessment for the Commencement Bay Environment, the Trustees have developed and analyzed
12 information sufficient to support a settlement that is fair, reasonable and in the public interest.

13 J. To facilitate resolving natural resource damage claims, the Trustees developed a
14 proposed allocation of Hylebos Waterway Natural Resource Damages liability among Hylebos
15 Waterway PRPs solely for settlement purposes. Relying upon the results of the damage assessment
16 studies, remedial investigations, regulatory standards, and scientific literature, the Trustees first
17 developed an estimate of the amount of injury to natural resources that had occurred as a result of
18 releases of hazardous substances to the Hylebos Waterway. The Trustees quantified the effects of
19 the injuries in terms of the losses of ecological services over affected areas of the waterway and over
20 time, discounted to the current year. The Trustees used the term *discounted ecological service*
21 *acre-years* (DSAYs) to describe both the scale of the injuries, and the amount of habitat restoration
22 they are seeking to compensate for the injuries. For the Hylebos Waterway, the Trustees are seeking
23 to recover from all PRPs funds, property and/or in-kind services needed to generate habitat
24 restoration sufficient to compensate for the loss of 1526.77 DSAYs.

25 K. Plaintiffs assert that hazardous-substance releases to the Hylebos Waterway have
26 become dispersed and commingled to the extent that the effects of one PRP's releases cannot be
27 readily distinguished from another's. Plaintiffs further assert that the circumstances of the Hylebos
28

1 Waterway contamination make all PRPs who contributed to the contamination jointly and severally
2 liable for all injuries to natural resources that have resulted from the contamination. As a
3 consequence, Plaintiffs assert the right to recover for the loss of all 1526.77 DSAYs from any
4 Hylebos Waterway PRP. Without prejudice to their position, and solely for purposes of facilitating
5 settlement with individual PRPs, the Trustees have developed a proposal for allocating liability for
6 the 1526.77 DSAYs among the PRPs. Independent consultants hired by the Trustees reviewed
7 existing information from the files of EPA, the Washington State Department of Ecology, and local
8 public libraries to allocate liability among the various Hylebos Waterway facilities that contributed
9 to the contamination.

10 L. To ensure that all PRPs had an equal opportunity to be informed of and to offer their
11 views on the Trustees' settlement proposal, in April 2002 the Trustees presented their report on the
12 proposed allocation to the public for notice and comment. The Trustees took comments for 60 days,
13 revised the report based upon the comments received, and made it available to PRPs in final form.

14 M. After evaluating available information, the Trustees have determined, solely for
15 purposes of this settlement and without any bearing on or applicability in any other context, that
16 Defendants should be allocated liability for a total of 257.849 DSAY losses and \$1,793,888.46 in
17 damage assessment costs as a consequence of Defendants' respective industrial and commercial
18 processes and activities resulting in alleged hazardous substances releases in connection with the
19 above-named facilities.

20 N. In settlement of this action Defendants have agreed, in lieu of and as equivalent to
21 monetary damages, to contract with Pierce County to secure permanently the right to use real
22 property for the purpose of natural resource restoration, to construct thereon the habitat restoration
23 project described in Appendix A ("Old Soldier's Home Setback Levee Project" or "Project"),
24 attached hereto and by this reference incorporated herein and perform any additional activities
25 described in Appendix A. Defendants have also agreed to contribute funds to support project
26 oversight by the Trustees, and to reimburse natural resource damage assessment costs incurred by
27 the Trustees.

1 O The Trustees have determined that the timely actions and expenditures to be
2 undertaken by Defendants under this Consent Decree are appropriate and necessary to protect and
3 restore the natural resources allegedly injured as a result of alleged actions or omissions of
4 Defendants that are addressed herein, and that such timely actions and expenditures are adequate to
5 redress Defendants' responsibility for the Natural Resource Damages that are the subject of this
6 proceeding

7 P Defendants do not admit any liability to Plaintiffs arising out of the transactions or
8 occurrences alleged in the Complaint and the matters alleged in this Consent Decree.

9 Q Plaintiffs and Defendants agree, and this Court by entering this Decree finds, that this
10 Decree has been negotiated by the Parties in good faith; that settlement of this matter will avoid
11 prolonged and complicated litigation between the Parties; and that this Decree is fair, reasonable,
12 and in the public interest.

13 NOW, THEREFORE, it is hereby Ordered, Adjudged and Decreed:

14 III. JURISDICTION AND VENUE

15 1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C.
16 §§ 1331, 1345 and 1367, and 42 U.S.C. §§ 9607 and 9613(b) and 33 U.S.C. § 2717(b). The Court
17 has personal jurisdiction over the Parties. Solely for the purposes of this Decree and the underlying
18 Complaint, the Parties waive all objections and defenses that they may have to jurisdiction of the
19 Court or to venue in this District. The Parties may not challenge the terms of this Decree or this
20 Court's jurisdiction to enter and enforce this Decree.

21 IV. PARTIES BOUND

22 2. This Decree is binding upon the United States, the State, the Puyallup Tribe of
23 Indians, the Muckleshoot Indian Tribe, each Defendant and their heirs, successors and assigns. Any
24 change in ownership or corporate or other legal status, including but not limited to any transfer of
25 assets or real or personal property, will in no way alter the status or responsibilities of the Parties
26 under this Decree.

27 3. Defendants shall provide a copy of this Consent Decree to Pierce County as the party
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1 that will be performing the work required by this Consent Decree, to each contractor hired by
2 Defendants to perform any of the work required by this Consent Decree, and to each person
3 representing Defendants with respect to any such work, and shall condition all future contracts
4 entered into by Defendants hereunder upon performance of the work in conformity with the terms
5 of this Consent Decree. Defendants or their contractors shall provide written notice of the Consent
6 Decree to all subcontractors hired by Defendants' contractors to perform any portion of the work.
7 Defendants shall be responsible for ensuring that all work performed by their contractors and
8 subcontractors and by Pierce County, including that performed by its contractors and subcontractors,
9 is performed in accordance with this Consent Decree.

10 V DEFINITIONS

11 4. Unless otherwise expressly provided, terms used in this Decree that are defined in
12 CERCLA or in regulations promulgated under CERCLA have the meanings assigned to them in
13 CERCLA or in such regulations. Whenever the terms listed below are used in this Decree or in any
14 attached appendix, the following definitions will apply:

15 a. "CERCLA" means the Comprehensive Environmental Response
16 Compensation and Liability Act of 1980, as amended, 42 U.S.C. § 9601, *et seq.*

17 b. "Commencement Bay Environment" means the waters of Commencement
18 Bay, State of Washington -- including the shoreline, intertidal areas, tributaries, drainage areas,
19 estuaries and bottom sediments -- lying south of a line drawn from Point Defiance to Dash Point.
20 These waters include the Thea Foss Waterway, Wheeler-Osgood Waterway, Middle Waterway, St.
21 Paul Waterway, Puyallup River from the mouth south to the present City limits, Milwaukee
22 Waterway, Sitcum Waterway, Blair Waterway, and Hylebos Waterway. This area includes but is
23 not limited to the Commencement Bay Nearshore/Tideflats Superfund Site, as identified or amended
24 by the EPA, including the B&L Landfill, and areas affected by releases of hazardous substances
25 within the Commencement Bay Nearshore/Tideflats Superfund Site.

26 c. "Commencement Bay Restoration Account" means the Commencement Bay
27 Natural Resource Restoration Account authorized by the Order Directing the Deposit of Natural
28

1 Resource Damages into the Registry of the Court in United States v. Port of Tacoma, No.
2 C93-5462B (W.D. Wash. Oct. 8, 1993) (attached as Appendix B).

3 d "Consent Decree" or "Decree" means this Consent Decree and all attached
4 appendices. In the event of a conflict between this Consent Decree and any Appendix, the Consent
5 Decree will control.

6 e "Day" means a calendar day. In computing any period of time under this
7 Consent Decree, where the last day falls on a Saturday, Sunday, or federal holiday, the period of time
8 will run until the close of business of the next working day.

9 f "DSAYs" means discounted ecological service acre-years, the metric
10 established by the Trustees to determine the scale of Natural Resource Damages liability associated
11 with the Hylebos Waterway and the natural resource restoration efforts needed to compensate for
12 injury to, destruction or loss of natural resources giving rise to liability.

13 g "Defendant" means each one of, and "Defendants" means all of, AOL
14 Express, Inc., Arkema Inc., Edward and Molly Barry, Buffelen Woodworking Co., CHS Inc., Charles
15 P. and Patricia Curran, Dunlap Towing Company, Estate of Norman Nordlund, Estate of Leslie P.
16 Sussman, F.O.F., Inc., Hylebos Boat Haven, Hylebos Marina, Inc., Judy Johnson, Jones Chemicals,
17 Inc., Joseph Simon & Sons/Rail & Locomotive Equipment Co., Louisiana-Pacific Corporation,
18 Phyllis Nordlund, Nordlund Boat Company, Inc., Nordlund Properties, Inc., Noveon Kalama
19 Chemical, Inc. (and its predecessor Kalama Chemical, Inc.), Don and Alba Oline, Ronald Oline,
20 Donald S. and Barbara L. Olson, Kay E. Olson, Olson & Curran Barnacle Stopping Salt Water Free
21 Vertical Dry Dock Co. dba Ole & Charlie's Marinas, Portac, Inc., Rayonier Properties, LLC, Paula
22 Rose, Sussman Rose Sussman, Alan Sussman, Sophie Sussman, USG Interiors, Inc., Wasser &
23 Winters Co., Inc., West Waterway Associates, P.S., and Zidell Marine Corporation.

24 h "MTCA" means the Model Toxics Control Act, Chapter 70.105D RCW.

25 i "Natural Resources" means that definition as provided in 42 U.S.C. §
26 9601(16)

27 j "Natural Resource Damages" means damages, including costs of damage

assessment, recoverable under Section 107 of CERCLA, 42 U.S.C. § 9607; Chapter 70.105D RCW; Section 311 of the Clean Water Act (CWA), 33 U.S.C. § 1321; and Section 1002(b)(2)(A) of the Oil Pollution Act of 1990 (OPA), 33 U.S.C. § 2702(b)(2)(A), for injury to, destruction of, or loss of natural resources resulting from releases of hazardous substances or discharges of oil to the Commencement Bay Environment at or from sites along, adjacent to or draining to the Hylebos Waterway.

k. "Parties" mean the United States, the State of Washington, the Puyallup Tribe of Indians, the Muckleshoot Indian Tribe and Defendants.

l. "Plaintiffs" means the United States, the State, the Puyallup Tribe of Indians, and the Muckleshoot Indian Tribe.

m. "Project" means the Old Soldier's Home Setback Levee Project described in Appendix A.

n. "Project Site" means the approximately 92-acre site composed of all or a portion of Pierce County tax parcels 051932-3-041, 051931-4-031, 051931-4-029, 051932-3-020, 051932-3-010, 051932-3-025, 051805-2-000 and 051805-2-001 near Orting, Washington, as indicated in Appendix A, that is owned by Pierce County and on which the Project is to be developed according to the terms of this Consent Decree.

o. "Trustees" mean the United States Department of Commerce, acting through NOAA; the Department of the Interior; the Washington State Department of Ecology, on behalf of the State of Washington; the Puyallup Tribe of Indians; and the Muckleshoot Indian Tribe.

VI. GENERAL PROVISIONS

5 The Complaint states claims upon which relief may be granted.

6. Nothing in this Consent Decree shall be construed as an admission of liability by any Defendant for any claims or allegations made in the Complaint or in this Consent Decree.

7. Except where otherwise expressly provided, each Defendant shall be jointly and severally responsible for performing the obligations undertaken by Defendants under this Consent Decree. Plaintiffs may take such actions as provided below to enforce the terms of this Consent

Decree against any one or more of Defendants as Plaintiffs may choose

8. This Consent Decree shall not be used as evidence against any Party in any action or proceeding other than an action or proceeding to enforce the terms of this Consent Decree.

9. All activities undertaken by Defendants pursuant to this Consent Decree shall be performed in accordance with the requirements of all applicable laws and permits.

10. Defendants shall ensure that all work performed under this Consent Decree shall be conducted pursuant to the design and schedule approved by the Trustees in Appendix A attached hereto and shall be subject to review by the Trustees. If the Trustees determine that Defendants or Pierce County are not complying with the design and schedule set forth in Appendix A, the Trustees shall provide prompt written notice to Defendants specifying the basis for their determination of noncompliance. Defendants may correct the noncompliance or invoke the dispute resolution procedures set forth in Section XV below. Subject to the right of Defendants to invoke the dispute resolution provisions, the Trustees may require Defendants to take actions, to alter, suspend or cease ongoing activities, and to alter, postpone or refrain from taking proposed actions, as the Trustees reasonably deem necessary to ensure compliance with the terms of this Consent Decree and any plans or proposals adopted hereunder.

11. This Consent Decree is not, and shall not be construed to be, a permit issued pursuant to any law.

12. Where any portion of the activities undertaken pursuant to this Consent Decree requires a federal, state or local permit or approval, Defendants or Pierce County shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals. Defendants or Pierce County shall use best efforts to obtain any necessary permits.

13. The Plaintiffs do not, by their consent to the entry of this Consent Decree, warrant or aver in any manner that Defendants' compliance with this Consent Decree will result in compliance with CERCLA or any other law. Compliance with this Consent Decree does not diminish or affect Defendants' responsibility to comply with any applicable federal, state or local law or regulation. The Parties agree that Defendants are responsible for achieving and maintaining